

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1149 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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NEMATULLA ATULLA ABBASI

Versus

CHARITY COMMISSIONER  
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Appearance:

MR AV TRIVEDI for Petitioner  
MR VM PANCHOLI, AGP for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
MR NK THAKKAR for Respondent No. 6, 7, 8  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 16/06/2000

ORAL JUDGEMENT

#. The appellant who was Mutwalli of the Trust known as Mulla Kasam Saheb Roja and Masjid registered with the

Charity Commissioner's office at Serial No.B 659 (Ahmedabad) has filed this appeal under section 72(4) of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the Act" for short) challenging the judgment and order dated November 9, 1979 passed by the learned City Civil Judge, Court No.12, Ahmedabad in Civil Misc. Application No.270 of 1978 by which order, the appellant was directed to pay to the Trust 5% of the excess amount retained by him towards the expenses legally entitled from the Trust properties.

#. The Trust known as Mulla Kasam Saheb Roja and Masjid was registered with the office of the Charity Commissioner, Ahmedabad at Serial No.B 659 after coming into operation of the Act. The Scheme was framed by the Charity Commissioner which came into force from February 15, 1966. Under the Scheme as per Clauses 24 and 26 hereditary Mutawalli was entitled to remuneration at 5 % of the income of the Trust. An application was made to the Charity Commissioner by the appellant to retain 10% of the amount as his remuneration from the income of the Trust properties. An inquiry was made by the Deputy Charity Commissioner under sections 40 and 41 of the Act. A report was submitted before the Charity Commissioner, Ahmedabad which came to be numbered as Suo Motu Inquiry under sections 40 and 41 of the Act. The appellant appeared in the said suo motu inquiry and contended that, he was hereditary Mutawalli and was entitled to 10% remuneration from the Trust properties. It was contended that, the Charity Commissioner by order dated May 14, 1976 had raised the amount of remuneration from 5 % to 10% and accordingly the scheme was amended pursuant to the Scheme Misc.Application No.5 of 1975. In view of the above facts, the appellant contended that, he was not liable to refund excess amount of 5% which he had collected as his remuneration from the Trust properties.

#. Learned Joint Charity Commissioner who conducted suo motu inquiry was pleased by his judgment and order dated December 6, 1977 directing the appellant to refund to the Trust a sum of Rs.8616=60 and to pay the costs of the inquiry. The said order of the Joint Charity Commissioner was challenged by the appellant before the City Civil Court, Ahmedabad by filing an application under section 72 of the Act. The said application was numbered as Civil Misc.Application No.270 of 1978 in the City Civil Court, Ahmedabad. Learned City Civil Judge, Court No.12 who heard and conducted the above application by his judgment and order dated November 9, 1979 dismissed the application filed by the appellant by confirming the order of the Joint Charity Commissioner

which has been challenged by the appellant by filing this appeal.

#. Learned counsel for the appellant - Mr.A.V.Trivedi has taken me through the entire record and proceedings and contended that there was no provisions of charging 5% remuneration prior to the coming into force of the Scheme of the Trust, and therefore, the courts below erred in passing the order that the appellant should refund the excess amount of 5% recovered by him for his remuneration as Mutawalli. Learned counsel for the appellant further submitted that, the Charity Commissioner by order dated May 14, 1976 had himself increased remuneration at 10% of the Mutawalli. Therefore, orders of the courts below are against the provisions of the Scheme. Therefore, appeal deserves to be allowed.

#. Learned counsel for the respondent Nos.6, 7 and 8-Trustees of the Trust - Mr.N.K.Thakkar has vehemently submitted that the orders passed by the courts below are in consonance with the provisions of the Scheme and the appellant had taken 5% more remuneration against the provisions of the Clauses 24 and 26 of the Scheme, and therefore, appeal be dismissed with costs.

#. Learned AGP Mr.V.M.Pancholi has supported the judgments and orders passed by the courts below.

#. It is an admitted fact that the Trust was registered under the provisions of the Act in the office of the Charity Commissioner, Ahmedabad at serial No.B 659 (Ahmedabad) on April 1, 1965. After the Trust was registered, the Scheme was framed with regard to the Trust known as Mulla Kasam Saheb Roja and Masjid on February 15, 1966. As per Clauses 24 and 26 of the Scheme of the Trust, hereditary Mutawalli was entitled to 5% remuneration to be recovered from the income of the Trust. Admittedly, the appellant had charged 10% as his remuneration from the Trust's properties after coming into operation of the Scheme which came to be framed on February 15, 1966. Prior to coming into force of the Scheme of the Trust, there were no provisions for the remuneration to be charged by the hereditary Mutawalli from the income of the Trust. Therefore, in my opinion, the courts below were not justified in directing the appellant to pay the excess amount of 5% remuneration recovered by him from the properties of the Trust. However, the appellant shall have to refund 5% of the excess amount recovered by him as his remuneration from February 15, 1966 when the Scheme came into force. It is true that, pursuant to the filing of the Scheme Misc.

Application No.5 of 1975 by the appellant and two other Trustees, the Charity Commissioner had increased the amount of remuneration to 10% by order dated May 14, 1976. But, increased remuneration of 10% will only apply after the modification of Clauses 24 and 26 of the Scheme after May 14, 1976.

#. In view of the above facts and situation emerging from the record of this case, appeal deserves to be partly allowed. The appellant is directed to refund 5% remuneration which was excess as per the provisions of the Scheme for a period from February 15, 1966 to May 14, 1976. Appeal is accordingly allowed. The judgments and orders of the courts below are modified to the extent that the appellant shall pay to the Trust excess amount of 5% recovered by him as remuneration from the period from February 15, 1966 to May 14, 1976. The cost of the Charity Commissioner shall be recovered from funds of the Trust's properties. The appellant and respondents shall bear their own costs.

(M.H.Kadri,J.)  
(pathan)